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in the United States Patent and Trademark Office

Patent No. :6,063,381

Serial No. :08/338,489

Appn. Filed:18 November 1994

Applicant(s): Staggs, Jeff J.

Appn. Title: Antifungal Botanic Extracts and Related Compounds (formerly)  
Therapeutic Uses of Pungent Botanicals and Their Related Compounds.

PCT/US93/04763 (CIP)

Int. Filing: 19 May 1993

Art Unit:

Examiner: Dixon, William

Mailed: 12th June 2000  
From: Denver, Colorado

**Renewed Petition  
Request for Refund of Excess Claim Fees  
37 CFR 1.126**

**RECEIVED**

JUL 03 2000

Commissioner of Patents and Trademarks  
Washington, District of Columbia 20231

OFFICE OF PETITIONS  
DEPUTY A/C PATENTS

Sir:

In response to the Petition Decision dated April 10, 2000, Applicant respectfully requests reconsideration of matters therein in view of arguments contained herein, and requests refund of \$2111.00 in excess claim fees resulting from Applicant cancellation of non-elected claims subsequent to Examiner restriction requirement (mailed May 26, 1998).

Applicant submits that such a refund is proper under Rule 26 in that ".....fees paid in excess of that required will be refunded..."

Examiner should note that there is no fee, charge, or penalty for a restriction requirement.

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RECEIPT ACCOUNTING  
DIVISION

# 26

Proper payment of the excess claim fees in question prior to the restriction requirement of record has never been in dispute.

However, Examiner has failed to consider special procedures which authorize refund of properly canceled non-elected claims as defined in MPEP 607 :

*After a requirement for restriction nonelected claims will be included in the fees due in connection with a subsequent amendment **unless such claims are canceled.***

Simply put, the non-elected claims will be included in the fee tally, which as a matter of practice are always compared against subsequent "amendments affecting the claims" "...**unless such claims are canceled.**" Therefore, a "subsequent amendment" "after a requirement for restriction" which cancels "nonelected claims", will not be "included in the fees due in connection with the amendment" (which is "subsequent"), and effectively reduces the fee tally accordingly, as no examination of the claims on the merits has yet begun.

Ordinary claim presentation and cancellation is a voluntary action on the part of applicant. Conversely, a restriction requirement constitutes a refusal by the examiner to examine claims for which excess claim fees have been paid. These requirements can be arbitrary, as is clearly the case here, and are always beyond the control or anticipation of the applicant.

The PTO offers to the public examination of excess claims in exchange for excess fees. To then refuse to perform the examination (restriction requirement) while keeping the excess fees for services they have refused to render is to suggest that the PTO is entitled to swindle applicants out of fees "in excess of that required..." as has clearly happened here. In business and law, such as practice is called a "swindle", or a "fraud". Why does Examiner think the PTO above all other institutions? This is clearly illegal, and would be overturned if brought before the courts, the Congress, or the public.

In a furtherance of this, Examiner will acknowledge that these nonelected claims for which the PTO has collected excess fees, and refused services of examination again offer examination of the claims if Applicant pays a second time for these same claims in another application. This amounts to "double billing" (charging twice for a single service) again illegal in business, law, and government which cannot double tax.

The least the PTO should do is to allow a credit for canceled nonelected claims toward another application.

Prior to the present Petition Decision, Applicant had spoken to four other PTO individuals of primary examiner level and above from three different groups with regard to refund practice under these circumstances. All four agreed that refund of excess claim fees for nonelected claims was proper if immediately canceled in response to the restriction requirement. The refund, however, was not approved because the case Examiner (Weddington) continued to make reference to the previously canceled nonelect claims in his office letters, thereby giving the false impression that they had not in fact been canceled by Applicant. These individuals cited failure to cancel nonelected claims as the grounds for refusing the refund. As Applicant would point out these errors in response to the refusal, the case was not acted on and passed to someone else until the present.

The refund would not even be an issue if the office had not illegally deprived Applicant of his lawful status as an international application under USC 371. The law states that issues with regard to plural invention be reviewed under international "unity of invention" criteria, which allows for more breadth in this circumstance, hence the excess claims. Examiner Weddington instead made the restriction requirement basis the more narrow national "independent and distinct" criteria which is not according to the law. I made repeated attempts to correct this error, which were simply ignored as the record shows, apparently to suit personal convenience, and bureaucratic objectives to maximize revenues, and minimize services rendered. With a few strokes of the pen, Applicant was swindled out of more than \$2,100 in national stage filing fees, and deprived of rights under USC 371 for which Applicant spent several hundred hours, and paid several thousand dollars in fees over a period of seven years to lawfully obtain.

To add to the above outrage, the Office published the incorrect specification of the patent which discloses all 20 inventions; 19 of which have no claims protecting them, as they were disallowed by Examiner Weddington in the restriction requirement for which excess fees were paid, but services not rendered. A much more concise substitute specification eliminating disclosure of the 19 nonelect inventions was properly, and timely filed along with corrected drawings. I spoke to Examiner Weddington in December 1999 concerning entry of these amendments. He assured me they were received, and properly entered, and would constitute the issued patent. This did not happen.



The Office has improperly denied Applicant's right to examination of claims under treaty law (USC 371) in this patent, kept the fees for services not rendered, then arbitrarily published those same inventions for which claims were denied by restriction, and contrary to assurances that this would not happen. As a result, the Office has further exposed Applicant to much greater risk of infringement litigation, as publishing a patent with unprotected inventions will tempt the public toward free use of Applicant's rightful property in the absence of applicable claims.

This is clearly illegal, not to mention tyrannical. Kindly remit.

*Jeff J. Staggs* 6/12/00

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I certify that this correspondence will be deposited with the United States Postal Service as first class mail with proper postage affixed in an envelope addressed to: "Commissioner of Patents and Trademarks, Washington, DC 20231" on June 12, 2000.

*Jeff J. Staggs* 6/12/00  
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Jeff J. Staggs, Applicant Date